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ARIZONA CORPORATION COMMISSION

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February 5, 1998

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street
Room 222
Washington, D.C. 20554

VIA FEDERAL EXPRESS

Re: In the Matter of Federal-State Joint Board on
Universal Service
Docket No. 96-45; DA 98-2 (Report to Congress)

Dear Secretary Salas:

Enclosed are an original and nine (9) copies of the reply comments of the Arizona Corporation Commission in the above-captioned matter. A copy has been provided for each of the Commissioners.

Please do not hesitate to contact the undersigned if you have any questions regarding this filing.

Very truly yours,

A handwritten signature in cursive script, reading "Paul A. Bullis".

Paul A. Bullis
Chief Counsel
(602) 542-6024

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Enclosure

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of)	CC Docket No. 96-45
)	[DA 98-2]
Federal-State Joint Board on)	
Universal Service)	(Report to Congress)
)	

REPLY COMMENTS OF THE
ARIZONA CORPORATION COMMISSION

Pursuant to Sections 1.49, 1.415, and 1.419 of the Federal Communications Commission's ("FCC") Rules of Practice and Procedure, 47 C.F.R. §§ 1.49, 1.415, 1.419 (1997), and the FCC Common Carrier Bureau's ("CCB") January 5, 1998 Public Notice, DA 98-2 titled "Common Carrier Bureau Seeks Comment for Report to Congress on Universal Service Under the Telecommunications Act of 1996", the Arizona Corporation Commission ("Arizona Commission") submits the following reply comments in response to the initial comments filed by other parties on January 23, 1998.

The Arizona Commission's responsive comments follow the format contained in the CCB's January 5, 1998 Public Notice.

- (1) **the definitions of "information service," "local exchange carrier," "telecommunications," "telecommunications service," "telecommunications carrier," and "telephone exchange service" in section 3 of the Act, and the impact of the interpretation of those definitions on the provision of universal service to consumers in all areas of the Nation;**

While the Arizona Commission has not examined all of the FCC's rulings related to individual service offerings, it generally agrees with the FCC's interpretations of the terms

“information service,” “local exchange carrier,” “telecommunications,” “telecommunications service,” “telecommunications carrier,” and “telephone exchange service” contained in section 3 of the Telecommunications Act of 1996 (“1996 Act”). The FCC’s interpretations of these terms appear to be for the most part consistent with the plain language of the 1996 Act. The FCC has properly rejected arguments that universal service assessments on wireless carriers are prohibited under Title 47.¹ Wireless providers are required to contribute to both federal and state universal service funds given their status as telecommunications carriers and providers of telecommunications services. Both Sections 254(d) and (f) provide that “every telecommunications carrier”.... “shall contribute, on an equitable and nondiscriminatory basis”.... “to the preservation and advancement of universal service.”

(2) the application of those definitions to mixed or hybrid services and the impact of such application on universal service, and the consistency of the Commission’s application of those definitions, including with respect to Internet access for educational providers, libraries, and rural health care providers under section 254(h) of the Act.

While the Arizona Commission has not examined all of the FCC’s rulings pertaining to hybrid service offerings, it agrees with the Washington Utilities and Transportation Commission (“WUTC”) that, “future user applications and service offerings may blur the distinction” between the different types of providers in the future. Ultimately as technology advances it may become far more difficult to apply the existing rules to hybrid services in a competitively neutral manner. Therefore, the FCC should recommend changes to the existing law if necessary to permit it to assess all users for profit of the public switched network an amount in furtherance of universal service so

¹See Comments of, *inter alia*, PCIA, AirTouch.

no single class is unduly burdened.

(3) who is required to contribute to universal service under section 254(d) of the Act and related existing Federal universal service support mechanisms, and of any exemption of providers or exclusion of any service that includes telecommunications from such requirement or support mechanisms;

The Arizona Commission's comments on this issue are limited to responding to the arguments of the wireless carriers and the enhanced service providers. The FCC has correctly interpreted the 1996 Act as requiring wireless carriers to contribute to both federal and state funding mechanisms in the future. Their contributions are specifically required under §§ 254(d) and (f) of the 1996 Act. Wireless providers are quickly becoming viable competitors of land-line networks and providers. The FCC and state commissions are charged with implementing the requirements of the 1996 Act in a competitively neutral manner. The position that the intrastate revenues of wireless carriers only be exempted from universal service contribution is directly contrary to this requirement of the 1996 Act, as well as others.

As to other exclusions, as the distinction between various hybrid offerings begins to blur, it may become necessary for the federal fund to assess all users for profit of the public switched network, an amount to support universal service. This is not to say that all contributors should be regulated as common carriers in the future. However, competitive neutrality may ultimately be achieved in the future only by spreading the funding obligation over all users for profit of the public switched network. Arbitrary distinctions as to the nature and type of service provided may not prove workable in the future.

(4) who is eligible under sections 254(e), 254(h)(1), and 254(h)(2) of the Act to receive specific Federal universal service support for the provision of universal service, and the consistency with which the Commission has interpreted each of those provisions of section 254; and

The Arizona Commission has not examined all of the determinations made by the FCC to-date on eligible entities under 254(e), 254(h)(1) and 254(h)(2) and therefore offers its opinion at this time only on an issue raised by the State Joint Board Commenters. The Arizona Commission agrees with the State Joint Board Commenters that it is currently unclear under Section 254 whether carriers must be designated eligible telecommunications carriers before they may receive support for providing qualifying services to rural health care institutions. The State Joint Board Commenters point out that this requirement is inconsistent with the manner in which discounts to carriers providing qualified services to schools and libraries is handled in that eligible telecommunications carrier status is not required in that instance. The Arizona Commission believes that any certificated telecommunications carrier, whether or not they have been designated an eligible telecommunications carrier, should be eligible for support if they provide qualified services to rural health care institutions.

Denying providers the ability to serve rural health care institutions unless they are designated as an eligible telecommunications carrier and agree to serve the entire service area of the incumbent LEC does not appear to serve any legitimate purpose. It may also act to render ineligible existing providers and other lower cost, yet highly qualified providers from receiving the federal benefits to which they would otherwise be entitled. Thus, the Arizona Commission agrees with the State Joint Board Commenters that if the existing language of Section 254(h)(1)(A) does not permit this result, the FCC should recommend to Congress that a technical amendment be made so that entities not

designated as eligible telecommunications carriers may receive the benefits of this program also.

(5) the Commission's decisions regarding the percentage of universal service support provided by Federal mechanisms and the revenue base from which such support is derived.

The Arizona Commission agrees with many commenters that the FCC may want to reevaluate its decision to cover only 25% of the amount necessary to serve high-cost areas. While Arizona may not be adversely impacted to the extent other states using the estimates provided in the WUTC's initial comments, it is clear that some of Arizona's sister states would be extremely burdened by application of this rule.² The Arizona Commission does not believe that the 25/75% split (which derives from the current allocation of non-traffic sensitive costs of the loop) is appropriate for use to limit the amount of support provided by the federal universal service fund. The plain language of the 1996 Act does not support this limitation on the FCC's obligations to ensure universal service on a nationwide basis.

The Arizona Commission suggests that the FCC also revise its rules to ensure more flexibility in the use and accountability of USF monies. One such alternative would be the use of block grants to states which the states could then disburse according to FCC guidelines on high cost areas and need. This approach would have several benefits including, providing maximum flexibility for use of federal funds at the state level, providing for more accurate targeting of USF funds, and ensuring maximum accountability of USF receipts. Whatever process the FCC ultimately

²For instance according to the WUTC's preliminary data, using cost estimates based on an average of Hatfield Version 4.0 and BCPM2 at default inputs, and the FCC's current 25/75% split, Arizona's state fund would only have to cover approximately \$.56 per line or \$16 million per year as opposed to a state such as Arkansas, which would have to cover \$10.59 per line or approximately 161 million per year through a state funding mechanism.

utilizes it should not be unduly burdensome or administratively complex since this will only work to deprive states in need of funding on a timely basis.

The Arizona Commission is also concerned with the FCC's proposal to utilize the support collected at the federal level for the sole purpose of reducing interstate access charges. This approach will put an even greater burden on state funds and local service rates in the future. This is because as the Joint State Commenters³ point out "[t]he Commission's USF Order does not acknowledge that the Fund has always, and must still, support some costs from the intrastate jurisdiction in order to keep rates affordable nationwide. ...Applying Federal USF support exclusively to interstate access service would remove this support." *Id.* at pps. 6-7. Further, utilizing federal universal service funds to reduce interstate access charges for the benefit of long distance providers is not consistent with the FCC's obligation under the 1996 Act to assure affordable local service rates.

The FCC finally seeks comment on the appropriate revenue base from which support can be derived for purposes of the federal funding mechanism. The 1996 Act limits the FCC to assessments of interstate revenues only to fund the federal universal service mechanism. The plain language of the 1996 Act does not support the assessment of intrastate revenues for federal universal service funding purposes. Rather, the plain language of Sections 254(d) and (f) make clear that assessments for the federal fund are to be derived from interstate providers and assessments for state funds are to be derived from intrastate providers. Placing interstate USF funding responsibilities on intrastate

³Comments of the Alabama, Alaska, Arkansas, Georgia, Idaho, Kentucky, Maine, Montana, New Hampshire, New Mexico, North Carolina, South Carolina, Vermont and West Virginia State Regulatory Agencies on the Commission's Report to Congress on Universal Service.

services would unduly burden the prices of intrastate telecommunications services and limit state USF funding capabilities.

The Arizona Commission believes that assessment of intrastate revenues by the federal fund would be permissible only with the individual state's consent, where the state itself chose not to implement a state universal service fund and elected to rely exclusively upon the federal USF fund. However since the FCC is not authorized under the 1996 Act to assess intrastate revenues, the Arizona Commission submits that there would have to be an election on the state's part to rely exclusively on the federal funding mechanism before intrastate revenues could become part of the assessment base.

Finally, the Arizona Commission supports measures to make eligible telecommunications carriers more accountable for the federal funds that they receive. The Arizona Commission also supports measures which would phase out funding where it is determined by the state commission to no longer be necessary.

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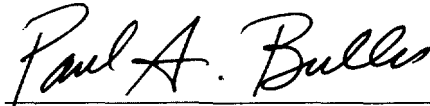
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The Arizona Commission appreciates the opportunity to submit comment in response to the comments of other parties on these important issues and looks forward to the opportunity to provide further comment as necessary.

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script that reads "Paul A. Bullis". The signature is written in dark ink and is positioned above a horizontal line.

Paul A. Bullis, Chief Counsel
Christopher C. Kempley, Assistant Chief Counsel
Maureen A. Scott, Assistant Counsel

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Dated: February 5, 1998.